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In the Supreme Court of the
United States

October Term, 1990

SANTA MONICA CULINARY WELFARE FUND
CHARLES A. CONINE and VICTOR VALENZUELA,

Respondents,

v.

MIRAMAR HOTEL CORPORATION,

Petitioner.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STUART LIBICKI
Schwartz, Steinsapir, Dohrmann & Sommers
3580 Wilshire Boulevard, Suite 1820
Los Angeles, California 90010
Telephone: (213) 487-5700

Counsel for Respondents
Santa Monica Culinary Welfare Fund,
Victor Valenzuela and Charles Conine

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Respondents Santa Monica Culinary Welfare Fund, Victor Valenzuela and Charles Conine respectfully oppose the petition of the Miramar Hotel Corporation for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

I

STATEMENT OF THE CASE

Petitioner Miramar Hotel Corporation (hereinafter "the petitioner" or "the Miramar") has been party to a series of collective bargaining agreements with Local 814 of the Hotel Employees and Restaurant Employees Union (hereinafter "the Union") over the last decade. Those agreements have required the Miramar to make contributions to the Santa Monica Culinary Welfare Fund (hereinafter "the

Fund") in order to obtain health benefits for its bargaining unit employees. (Appendix A to Petition, A4)

The Fund is an employee welfare benefit plan as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1002(1), and a jointly trusteed multi-employer trust fund established pursuant to Section 302(c)(5) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186. (Appendix A, A4)

The collective bargaining agreement in effect for the period from August 1, 1978 to August 1, 1983 included a provision expressly adopting the Trust Agreement that established the Fund. (Appendix A, A4) That agreement was succeeded by a new agreement effective for the period from August 2, 1983 to July 31, 1988 ("the

1983 Agreement"), which did not include this provision. After specifying the amount of contributions that the Miramar was required to make to the Fund, the 1983 Agreement provided:

> The foregoing is the extent of any and all of employer's obligations to the Santa Monica Culinary Welfare Fund, and otherwise under this Article XIV.

(Appendix A, A4)

During the term of the 1983 Agreement, respondents Santa Monica Culinary Welfare Fund, Victor Valenzuela and Charles Conine requested that petitioner submit to an audit to determine whether it had made all of the contributions required by the collective bargaining agreement. (Appendix A, A4) Petitioner refused on the ground that it was not bound by the

Trust Agreement and therefore not obligated to submit to an audit.

Respondents thereupon brought this action to compel an audit. Respondents coupled their demand for an audit with a claim for such unpaid contributions as the audit might disclose. After discovery, the petitioner filed a motion for summary judgment and respondents moved for summary adjudication on their demand for an audit. (Appendix B to Petition, B2)

The District Court granted the petitioner's motion for summary judgment and denied respondents' motion on the respondents' audit claim by Order entered on September 27, 1988. The District Court, noting that the factual setting of this case was an uncommon one for which there was no authority on point (Appendix B, B3, B4), held that the Miramar was not

required to submit to an audit because it was not contractually obligated to do so. It rejected the respondents' argument that the trustees of the Fund had the inherent power to demand an audit in order to fulfill their fiduciary responsibilities, relying in part on the absence of any language expressly adopting the Trust Agreement in the 1983 Agreement. (Appendix B, B5-B6) The District Court dismissed the respondents' claim for unpaid contributions without prejudice by that same order. (Appendix B, B6)

Respondents timely appealed. This appeal was dismissed on the ground that the District Court's order of September 27, 1988 was not a final order because it dismissed respondents' claim for unpaid contributions without prejudice. (Appendix A, A5 n.1) The respondents

renewed their appeal after the district court certified the audit claim for interlocutory appeal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

The Court of Appeals reversed. The Court held that the petitioner had necessarily agreed to be bound by the Trust Agreement when it agreed to make contributions to the Fund on behalf of it employees, since those employees could not be covered by the Fund if their employer had not agreed to be bound by the Trust Agreement. It further held that the parties to the 1983 Agreement did not have the power to amend the Trust Agreement without the Fund's consent and therefore could not relieve the Miramar of the Trust Agreement's requirement that an employer must agree to be bound by the Trust Agreement for its employees to receive benefits

from the Fund. Finally it held that the Fund was entitled to conduct a random audit, without first offering any evidence that the Miramar had in fact reported less than all of the contributions it owed on behalf of its employees. The Court denied petitioner's request for rehearing by order filed on February 7, 1991.

II

REASONS FOR DENYING THE PETITION

It is the petitioner's burden to show just why extraordinary review via certiorari should be granted in this case. Petitioner has not done so.

There are no compelling reasons to grant a writ of certiorari. The questions which the petitioner asks this Court to decide depend entirely on the interpretation of the language of the Trust Agree-

ment and the collective bargaining agreements in question. Those issues are absolutely unique to this case.

The Court of Appeals' decision is, moreover, grounded in settled principles of contract interpretation. There is no conflict between the decision of the Court of Appeals in this case and any decision of any other court of appeals; in fact, there are no reported decisions of any other court on any of the first three questions presented by the petition. Review of this decision will not add anything to the body of federal law in this area.

The Court of Appeals' decision was correct and should not be disturbed. The petition should be denied.

1. The Petition in This Case Does Not Present Any Pressing Issues of Nationwide Importance.

Petitioner opens its statement of reasons for granting a writ of certiorari in this case by claiming that "[t]his case presents issues of nationwide importance, having substantial impact upon employers, trust funds and beneficiaries, participants and fiduciaries . . . ." (Petition at 6) This statement simply is not true.

The issues which the petitioner has asked this Court to review are anything but "nation-wide." This case involves, as the District Court noted, a "unique" factual setting. (Appendix B, B4) As a result there are no other reported decisions, as far as respondents are aware, that address any of the issues framed by

this petition. It is hard to imagine a case with less "nation-wide importance" than this one.

Nor are the issues raised by this petition so urgent as to require extraordinary review by this Court. The Court's decision turns on a careful analysis of the language of the Trust Agreement, interpreted in light of well-established canons of contract interpretation, rather than on any new principles of law. This decision will have little impact on any other cases that do not involve either the same or similar provisions.

There are, of course, some cases so significant that review is appropriate, even though the issues may be unique. This is not such a case. While the issues presented in this case may be significant

to the petitioner and respondents, they have no wider public importance.

2. **The Court of Appeals' Decision in This Case Does Not Conflict With this Court's Decision in Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.**

Petitioner also claims that the Court of Appeals

> . . . effectively overruled this Court's decision in *Central States [Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559 (1985)] . . . by the expediency of stating that the mere contribution by an employer to a Fund authorizes the Fund to audit the employer! (Petition at 6)

The petitioner has misstated both the reasoning and the holding of the decision below.

The Court of Appeals did *not* hold that the Miramar was bound to the Trust Agreement simply because it made contributions to the Fund. On the contrary, the Court of Appeals held that the Miramar had agreed to be bound by the agreement because no other conclusion could be squared with the language of the Trust Agreement and with the Miramar's actions. (Appendix A, A7)

The Court began its analysis by holding that the Miramar intended, when it agreed to contribute to the Fund on behalf of its employees, for these employees to receive the health benefits provided by the Fund. (Appendix A, A7) This is the only conclusion that makes sense; after

all, if the Miramar did not intend for its contributions to provide benefits for its employees, then why would it have made these contributions in the first place? (Appendix A, A7) The Miramar has never offered any other explanation, plausible or otherwise, for these trust fund contributions.

The Court then proceeded to work out the practical consequences of that holding. As the Court noted, the Trust Agreement required that the Miramar's employees must be "employees" within the meaning of that agreement in order to receive health benefits. (Appendix A, A7) The Trust Agreement in turn defines "Employee" as:

> Any person . . . *employed by an Employer bound by this Agreement*, covered by a collective bargaining

agreement between his or her Employer and the Union. (emphasis added)

(Appendix A, A7) These employees could not receive benefits from the Fund if their employer were not "bound by this Agreement."

If the Miramar intended for its employees to receive these benefits and if they must be employed by an employer bound by the Trust Agreement in order to receive benefits, then the Miramar must therefore be bound by the Trust Agreement. It could not, the Court emphasized, take one without the other, that is, obtain the benefits provided by the Fund without agreeing to the Fund's conditions on those benefits. When it agreed to provide benefits to its employees through contributions to the Fund, the Miramar necessarily agreed to be bound by the Trust Agreement.

The petitioner claims that the Court somehow "overruled" *Central States* by interpreting the Trust Agreement in this fashion. This is not merely rhetorical excess; it is absolutely false.

Central States held that the trust documents governing employee benefit plans must be read in light of ERISA's policies, chief among them the need to protect workers' right to receive the benefits that they had been promised. *Central States*, 472 U.S. at 568, 569-70. That is what the Court of Appeals did in this case.

The Court did not hold that contribution to the Fund was enough, in and of itself, to obligate the Miramar to submit to an audit. On the contrary, the Court held that in order for these workers to receive the benefits that the Miramar had

promised them, the Miramar must have agreed to be bound by the conditions imposed by the Fund, *i.e.* agreed to be bound by the Trust Agreement. The Court based its decision on its interpretation of the Trust Agreement and the parties' collective bargaining agreement--precisely what the petitioner claims that it should have done. (Petition at 8-10)

The petitioner does not even address the Court of Appeals' reasoning in its petition. Instead it devotes virtually all of its argument to contending that it is not bound to the Trust Agreement because it did not agree to be bound--an argument that neatly assumes what it purports to prove. No amount of repetition will make the petitioner's argument any less circular or any more persuasive.

The petitioner also claims that the language of the 1983 Agreement shows conclusively that it did not intend to be bound by the Trust Agreement when it entered into that agreement. The previous collective bargaining agreement had expressly adopted the Trust Agreement. The 1983 Agreement not only did not contain that language, but also provided that "[t]he foregoing is the extent of any and all of employer's obligations to the Santa Monica Culinary Welfare Fund, and otherwise under this Article XIV." The Miramar argues that the Court of Appeals could not bind it to the Trust Agreement without effectively rewriting the collective bargaining agreement.

The Court of Appeals rejected this argument. In its view this language ("The foregoing is the extent of any and all of

employer's obligations. . . ."") was ambiguous and not made any clearer by the sketchy evidence of bargaining history offered by the petitioner. (Appendix A, A8) Its judgment as to whether this language was clear turns on that language and nothing more. It is not the type of decision that requires extraordinary review by this Court.

The Court of Appeals went on to hold that this language would not have been effective even if it had been clear. As the Court noted, the parties to this collective bargaining agreement did not have the power, without the Fund's agreement, to alter the Trust Agreement in order to permit contributions by an employer who did not agree to be bound. The petitioner does not attempt to distinguish any of the authorities relied upon by the Court of

Appeals or to offer any contrary authority.

Petitioner does not disagree with the Court of Appeals over any legal principle, but only over the way the Court chose to interpret the contract language before it. That is not the sort of dispute which should be reviewed by certiorari. This petition should be dismissed.

3. The Court of Appeals Properly Entered Summary Judgment For the Respondents.

Finally, the petitioner asks this Court to grant certiorari on the ground that the Court of Appeals improperly entered judgment for respondents, rather than remanding the action to the district court for trial on the issue of whether it intended to be bound by the

Trust Agreement when it entered into the 1983 Agreement. This question is neither substantial nor worthy of this Court's attention.

This case came to the Court of Appeals after the parties filed cross-motions for summary judgment in the district court. The petitioner had the opportunity to present any evidence that it had at that time; indeed, it was required to do so in order to meet the respondents' motion for summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

The petitioner presented only the slightest evidence concerning its intent in entering into the 1983 Agreement in the form of a declaration that merely stated that the language of the collective bargaining agreement was modified in negoti-

ations in 1983. That declaration did not offer any details as to what, if anything, was said on this subject at the time of these negotiations or what, if any, understandings the parties had concerning the Fund's authority to audit. (Appendix A, A8)

The Court of Appeals held that this evidence regarding the Miramar's intent was immaterial, since the parties to the 1983 Agreement did not have the power to modify the Trust Agreement's on this score. (Appendix A, A9) It also held that the evidence was too inconclusive to be of any value in interpreting the Trust Agreement or divining the Miramar's intentions. (Appendix A, A8)

It is hard to see what a new trial on this issue would accomplish. The petitioner had the opportunity to present

whatever evidence it had. The Court of Appeals held that the evidence it did present had no probative value. It properly entered judgment for the respondents. 28 U.S.C. § 2106; *and see Neely v. Martin K. Eby Const. Co.*, 386 U.S. 317, 322 (1967).

III

CONCLUSION

The Petition for Writ of Certiorari should be denied.

DATED: June 3, 1991

Respectfully submitted,

Stuart Libicki

Attorney for Respondents
SANTA MONICA CULINARY WELFARE FUND,
CHARLES A. CONINE and VICTOR VALENZUELA

PROOF OF SERVICE - F.R.C.P. 5(b)

I, MARGARITA HOLGUIN, the undersigned, certify and declare that I am a citizen of the United States, over the age of eighteen years, employed in the County of Los Angeles, State of California, and not a party to this action. On June 4, 1991, I served a true copy of ***BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT***

X *by depositing it in the United States mail at Los Angeles, California, in a sealed envelope with postage thereon fully prepaid to the following:*

Clerk, United States
Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(By Express Mail:
original and forty
copies)

Clerk, U.S. Court of
Appeals
Ninth Judicial Circuit
50 United Nations Plaza
Room 59
San Francisco, CA 94102

WILLIAM G. WELLS
Counsel of Record
707 Arizona Ave.
P.O. Box 799
Santa Monica, CA
90406
(3 copies)
Telephone: (213)
394-8313

GERALD M. SIEGEL
P.O. Box 799
Santa Monica, CA
90406
(3 copies)

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on June 4, 1991, at Los Angeles, California.

Margarita Holguin
MARGARITA HOLGUIN